
OLR Bill Analysis

sSB 460

AN ACT CONCERNING COASTAL PROTECTION MEASURES, ROUTINE MAINTENANCE AND REPAIR OF SHORELINE STRUCTURES, STATE-WIDE POLICY CONCERNING WATER RESOURCES AND PROCEDURES OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.

SUMMARY:

This bill expands the circumstances under which a property owner may maintain unauthorized coastal structures, fill, obstructions, and encroachments (“structures”) built before January 1, 1995 by grandfathering these structures into existing permitting exemptions. In addition, the bill reduces the number of activities subject to Department of Energy and Environmental Protection (DEEP) permitting and limits the commissioner’s discretion to deny certificates of permission (COP).

The bill also:

1. authorizes property owners and municipalities to temporarily fortify shoreline property in the event of a hurricane warning;
2. allows a person or municipality aggrieved by a DEEP decision to request a hearing and sets the timeline for civil penalty assessment;
3. makes an order issued by DEEP invalid and discharged after 15 to 18 years; and
4. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

UNAUTHORIZED STRUCTURES

By law, a DEEP individual or general permit is required for certain activities involving coastal structures, such as seawall construction or repair. However, minor activities related to previously authorized work may be eligible for a COP, which is easier to obtain than a permit. Activities eligible for a COP include maintenance dredging and substantial maintenance of existing structures. In some cases, maintenance of unauthorized structures that were completed prior to specific dates may also be eligible for a COP.

The bill eliminates the need for a COP for:

1. substantial maintenance of structures put in place between June 24, 1939 and January 1, 1995, so long as they were continuously maintained and serviceable;
2. minor alterations and amendments of structures put in place between June 24, 1939 and January 1, 1995; and
3. repair of structures put in place between October 1, 1987 and January 1, 1995 that are landward of the mean high waterline and waterward of the coastal jurisdiction line and were continuously maintained and serviceable.

Under current law, routine maintenance of certain structures can be done without a COP or a permit. The bill additionally permits routine maintenance of unauthorized structures put in place between June 24, 1939 and January 1, 1995 if they were continuously maintained and serviceable. On the other hand, it requires a COP for routine maintenance of an unauthorized structure put in place before January 1, 1995 if it was subject to a municipal or DEEP enforcement action before October 1, 2013. It also expands, from 25% to 50%, the proportion of pilings that can be repaired or replaced and still considered routine maintenance, so long as their footprint is unchanged.

COP APPROVAL

The bill requires, rather than allows, the DEEP commissioner to issue a COP for certain unauthorized structures and reduces the

applicants' burden to obtain a COP. Under current law, the commissioner may issue a COP for an unauthorized structure completed before January 1, 1995, provided the applicant demonstrates that the structure complies with all applicable wetlands and coastal structure standards and criteria. The bill instead requires the commissioner to issue a COP for structures that were completed before January 1, 1995 if they were not subject to a municipal or DEEP enforcement action before October 1, 2012.

The bill eliminates the commissioner's authority to require additional wetlands or coastal structure permits when a COP is requested for work on a permitted structure that will likely result in a significant impact to the environment or coastal resources because of changes in conditions or circumstances surrounding the permitted structure.

The bill also specifies that the commissioner must:

1. authorize use of alternative deck surfacing materials and standard and accepted materials for existing seawall repair or replacement when issuing a COP for an unauthorized structure;
2. consider an easement in perpetuity to be the same as an interest in fee simple when evaluating a COP application; and
3. determine, within 30 rather than 45 days, whether a COP should be granted, additional information is required, or the structure is ineligible for a COP.

Under the bill, if DEEP fails to respond within 30 days to a COP application for work on an unauthorized structure, except those in tidal wetlands, the application is deemed approved.

HEARINGS

The bill creates a right for every person or municipality aggrieved by a DEEP decision to ask for a hearing within 30 days after an order or decision is issued. The DEEP commissioner may not grant a hearing request after 30 days elapse. Following a hearing, the

commissioner must affirm or revise the order or decision after considering the presented facts, additional evidence, rebuttals, and any other evidence. Under current law, a hearing is only available following certain DEEP actions. Under the Uniform Administrative Procedure Act, if a hearing is held, the matter becomes a contested case subject to appeal to Superior Court.

The bill prohibits DEEP imposed civil penalties from being assessed until (1) a hearing is conducted and a final order is issued, (2) the period for requesting a hearing has passed and no request is made, or (3) a request for a hearing has been withdrawn.

EXPIRATION OF ORDERS

The bill makes all DEEP orders invalid and discharged after 15 years. An order may be extended by three years if notice of noncompliance is filed on the land record. An extended order expires three years from the date of filing.

TEMPORARY FORTIFICATION

The bill allows municipalities and property owners to fortify property above the coastal jurisdiction line with temporary structures when the National Hurricane Center issues a hurricane warning for any part of the state. Temporary structures may be erected 24 hours before a hurricane is predicted to start and must be removed within 48 hours after a hurricane warning is lifted.

POLICY CHANGES

The bill makes it a policy of federal, state, and local agencies implementing the Coastal Management Act to encourage cooperative use of confined aquatic disposal cells, which are depressions at the bottom of an aquatic system that are used to manage contaminated sediments.

It also makes it a policy, within the coastal boundary, to allow use of structural solutions when it is necessary to protect any property, not just inhabited structures, developed before January 1, 1995. By law, infrastructure facilities, burial grounds, and water-dependent uses

may also be eligible for structural protection.

BACKGROUND

Coastal Jurisdiction Line

“Coastal jurisdiction line” is the location of the topographical elevation of the highest predicted tide from 1983 to 2001. For any of the state's tidal, coastal, or navigable waters upstream of a tide gate, weir, or other device that modifies tidal water flow, the coastal jurisdiction line is the elevation of mean high water found at the device's downstream location.

Coastal Boundary

The “coastal boundary,” within the state's costal area, is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot linear setback from the mean high-water mark, or (3) a 1,000-foot linear setback from the inland boundary of the tidal wetlands.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 18 Nay 1 (03/22/2013)